

**BOISE, MONDAY, FEBRUARY 6TH, 2023, AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**SCOTT HERNDON, JEFF AVERY,** )  
**IDAHO SECOND AMENDMENT** )  
**ALLIANCE, INC., and SECOND** )  
**AMENDMENT FOUNDATION** )

**Plaintiff/Appellants,** )

**Docket No. 48975**

**v.** )

**CITY OF SANDPOINT, FESTIVAL** )  
**AT SANDPOINT, INC., DOES 1 TO** )  
**100** )

**Defendant/Respondents.** )

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Appeal from the District Court of the First Judicial District of the State of Idaho,  
Bonner County. Lansing L. Haynes, District Judge.

Law Offices of Donald Kilmer, P.C., Caldwell, and Alex Kincaid Law, Emmett,  
attorneys for Appellants.

Lake City Law Group PLLC, Coeur d’Alene, attorneys for Respondent–City of Sandpoint.

Bistline Law, PLLC, Coeur d’Alene, attorneys for Respondent–Festival at Sandpoint, Inc.

M.C. Brown Law, PLLC, Troy, and A.C. Baker Law, PLLC, Lewiston, attorneys for  
Amicus Curiae–Idaho State Rifle and Pistol Association, Inc.

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This appeal stems from a 2019 lease by the City of Sandpoint (“the City”) to The Festival of Sandpoint (“The Festival”), a non-profit corporation, to operate a multi-day music festival in War Memorial Field Park (“War Memorial Field”). The Festival’s policy banned attendees from bringing firearms into the event. On August 9, 2019, Scott Herndon and Jeff Avery arrived at War Memorial Field Park to attend the music festival, but both were denied entry when they tried to enter with firearms. A City police officer on standby outside the music festival told Herndon and Avery they would be trespassing if they tried to enter with their firearms. A City attorney attending the music festival in a civilian capacity also discussed the music festival policy with Herndon and Avery. Herndon and Avery ultimately left the event and received a refund for their tickets.

Herndon, Avery, the Idaho Second Amendment Alliance, Inc., and the Second Amendment Foundation, Inc. (“the Plaintiffs”) filed a complaint against the City and The Festival for: (1) declaratory relief; (2) injunctive relief; (3) conspiracy to deprive Plaintiffs of their rights to bear

arms under 42 U.S.C. section 1985; (4) violation of the Plaintiffs' Second Amendment rights under 42 U.S.C. section 1983; (5) violation of the Plaintiffs' Fourth Amendment rights under U.S.C. section 1983; and (6) violation of the Plaintiffs' Fourteenth Amendment rights under 42 U.S.C. section 1983. After abandoning the Fourth Amendment claim, all parties moved for summary judgment. The district court granted the City and The Festival's motions for summary judgment and dismissed the Plaintiffs' claims with prejudice. On appeal, the Plaintiffs argue they were entitled to a declaratory judgment and summary judgment on the civil rights claims, and the district court erred in applying judicial estoppel. The Plaintiffs also argue the district court erred in denying their motion for an extension of time to object to attorney fees.